

State of California
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text
and Availability of Additional Documents and Information**

**PROPOSED AMENDMENTS TO THE INNOVATIVE CLEAN TRANSIT REGULATION,
A REPLACEMENT OF THE FLEET RULE FOR TRANSIT AGENCIES**

Public Hearing Date: September 27, 2018
Public Availability Date: November 9, 2018
Deadline for Public Comment: November 26, 2018

At its September 27, 2018, public hearing, the California Air Resources Board (CARB or Board) considered staff's proposed amendments to sections 2023, 2023.1, 2023.2, 2023.3, 2023.4, and adoption of new sections 2023.5, 2023.6, 2023.7, 2023.8, 2023.9, 2023.10 and 2023.11, and to recodify all of these into a new Article 4.3, Chapter 1, Division 3, Title 13, of the California Code of Regulations (CCR). These sections comprise the Fleet Rule for Transit Agencies, and the Innovative Clean Transit Regulations Requirements. The Board did not take action on the proposal at the September 27, 2018 Board hearing.

The Board directed the Executive Officer to determine if additional conforming modifications to the regulation were appropriate and to make any proposed modified regulatory language available for public comment, with any additional supporting documents and information, for a period of at least 15 days in accordance with Government Code section 11346.8. The Board further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer was directed to evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare written responses to such comments as required by CARB's certified regulations at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9, subdivision (a). The Executive Officer was further directed to present to the Board, at a subsequently scheduled public hearing, staff's written responses to environmental comments and the final environmental analysis for consideration for approval, along with the finalized regulation and amendments for consideration for adoption.

The resolution and all other regulatory documents for this rulemaking are available online at the following CARB website:

<https://www.arb.ca.gov/regact/2018/ict2018/ict2018.htm>

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and

underline to indicate additions. New deletions and additions to the proposed language that are made public with this notice are shown in ~~double-strikethrough~~ and double underline format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice, documents added to the record, or the changes detailed in the attachments to this notice.

Summary of Proposed Modifications

Staff's proposed modifications to previously proposed amendments to sections 2023, 2023.1, 2023.2, 2023.3, 2023.4, and adoption of new sections 2023.5, 2023.6, 2023.7, 2023.8, 2023.9, 2023.10 and 2023.11, and to recodify all of these into a new Article 4.3, Chapter 1, Division 3, Title 13, CCR, are summarized below and attached to this notice as Attachment A.

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

A. Modifications to Section 2023. Applicability and Scope.

1. In section 2023(a)(2), staff proposes to add language to clarify the regulations do not apply to vehicles that operate on rails, trolleybuses, or school buses, even if operated by a transit agency.
2. In section 2023(b), a number of definitions have been added, deleted, or modified:
 - a. Staff proposes to add a definition for "Annual Maximum Service" that is used in a new definition of "Large Transit Agency".
 - b. Staff proposes to make a minor revision to the definition of "Battery Electric Bus" to improve the clarity.
 - c. Staff proposes to clarify the definition of "Bus Purchase" or "Purchase."
 - d. Staff proposed to simplify and clarify the definition of "Bus Type."
 - e. Staff proposes to delete the definition of "Commercially Available" because the term is only used once and is explained in the text in section 2023.6(a)(1).
 - f. Staff proposes to add a definition of "Demand Response," which has the same meaning as defined in title 49 of Code of Federal Regulations, section 604.3(g), and is used in combination with new definitions of "Large Transit Agency" and "Small Transit Agency" and "Annual Maximum Service."

- g. Staff proposes to delete the definition of “Fleet Size” because this term will not be used and is being replaced by the proposed definitions of “Large Transit Agency” and “Small Transit Agency.”
- h. Staff proposes to add a definition of “Gradeability,” that is needed to address stakeholder concerns with the ability of zero emission buses to safely traverse grades in areas with hilly terrain. The definition is used in a new subsection that describes how a transit agency can receive an exemption from the zero-emission bus purchase requirement as described in section 2023.4.
- i. In response to stakeholder comments, staff proposes to revise the definitions for “Large Transit Agency” and “Small Transit Agency” to a revised definition that is more commonly used by transit agencies to remain consistent with Federal requirements for funding buses.
- j. Staff proposes to add text to clarify the definition of “Minimum Useful Life.”
- k. Staff proposes clarify the definition of “Over-The-Road Bus.”
- l. Staff proposes to simplify the definition of “Regional Transportation Planning Organization” from 49 U.S.C. section 5303(b)(5) by deleting unnecessary and duplicative text.
- m. Staff proposes to revise the definition of “Repower” to simplify the language.
- n. Staff proposes to clarify the definition of “Revenue Service.”
- o. The definition for “Revenue Vehicle” was moved to be in alphabetical order and was renumbered.
- p. The definition for “Small Transit Agency” was moved to be in alphabetical order and was simplified to be consistent with the changes to the “Large Transit Agency” definition.
- q. Staff proposed to rename former definition of “Spare Vehicle” to “Spare Bus” because the term “Spare Vehicle” is not used. Additional changes are proposed to clarify the definition.
- r. Staff proposes to add a definition of “Urbanized Area” due to the proposed revision in the definition of “Larger Transit Agency.” These definitions incorporate federal definitions to be consistent with federal requirements for funding transit buses.
- s. Staff proposes to simplify the definition of “Zero-Emission Bus.”
- t. Staff proposes to clarify the definition of “Zero-Emission Passenger Miles.”

B. Modifications to Section 2023.1. Zero-Emission Bus Requirements.

- 1. In section 2023.1(a)(3), staff proposes to clarify language on conversions to zero emission buses.
- 2. In section 2023.1(a)(4)(D), the reference erroneously made to section 2023.1(1) was corrected to reference section 2023.1(a)(1).

3. Former section 2023.1(a)(5) was deleted to remove the two year limit requirement for the delivery of a new bus in response to stakeholder comments. The proposed change reduces administrative burden with needing to request extensions for bus orders that take more than two years.
 4. In renumbered section 2023.1(a)(6), staff proposes to clarify the condition to satisfy a zero-emission bus purchase requirement.
 5. In section 2023.1(b) and the following subsections (1), (2), and (3) the terms “waiver” and “waived” are replaced with the term “discharge” or “discharged” to minimize confusion with existing uses of the term “waiver” under the federal Clean Air Act. In subsections 2023.1(b)(1) and (2), staff proposes to revise the number of zero-emission buses by the end of 2020 and 2021 that would discharge the zero-emission bus purchase requirements for calendar year 2023 and 2024. Staff proposes to lower the requirement from 1,000 to 850 zero-emission buses purchased by 2020, and to increase the requirement from 1,150 to 1,250 zero-emission buses purchased by 2021. The change is based on updated information from transit agencies, improves the likelihood the initial target would be met, and increases the emissions benefits associated with meeting the second target.
 6. In section 2023.1(c) and (d), staff proposes to clarify the titles of these subsections and make other minor changes to improve clarity.
- C. Modifications to Section 2023.2. Compliance Option for Joint Zero-Emission Bus Groups.
1. In section 2023.2(b)(2), staff proposes change from “may” to “will” to clarify that if at least one of the criteria to form a Joint Zero-Emission Bus Group (Joint Group) has been met, and the required notice has been provided, the Executive Officer will approve the joint agreement.
 2. In section 2023.2(c)(5), staff proposes to revise the language in the text to remain consistent with the proposed revision to the definition of “Large Transit Agency” in section 2023(b).
- D. Modifications to Section 2023.3. Zero-Emission Bus Bonus Credits.
1. In section 2023.3(a), staff proposes to clarify the criteria for a transit agency to earn Zero-Emission Bus Bonus Credits.
 2. In a newly added section 2023.3(a)(4), staff proposes to add criteria for electric trolley buses to earn zero emission bonus credits. The credits would be for electric trolley buses placed in service between January 1, 2018, and December 31, 2019. Providing these bonus credits would

recognize trolley buses' contribution to expanding zero emission technology. The credits would expire by the end of 2024 and would provide additional flexibility in 2023 and 2024 if the conditions to discharge the purchase requirements are not met.

3. In section 2023.3(b), staff proposes to clarify the criteria for a transit agency to use Zero-Emission Bus Bonus Credits.

E. Modifications to Section 2023.4. Provisions for Exemption of a Zero-Emission Bus Purchase.

1. In section 2023.4(a), staff proposes to clarify the purpose of this section and specify that the Executive Officer will grant an exemption upon request, if the specified criteria set forth in section 2023.4(c) are met to ensure transit agencies are not adversely impacted by the zero-emission bus purchase requirements.
2. Staff proposes to delete former section 2023.4(c)(1), regarding the extension for bus manufacturing delays because the two year purchase period requirement specified in former section 2023.1(a)(5) was removed and the extension is no longer needed.
3. In renumbered section 2023.4(c)(1), staff proposes to modify the language regarding construction delays to conform to other changes that remove the two year limit on bus delivery. The modified language clarifies that the transit agency can receive an exemption from the zero emission bus purchase requirement due to construction delays that exceed two years after the zero emission bus purchase and after expected bus delivery. Further, staff proposes to clarify and reorganize the language regarding reasons for delays with installing zero-emission bus infrastructure in subsection (A).
4. In renumbered section 2023.4(c)(1)(B), staff proposes to clarify the documentation a transit agency must submit to the Executive Officer to request for exemption, and to clarify the language by adding the delay is beyond the transit agency's control.
5. In renumbered section 2023.4(c)(1)(C) and (D), staff proposes to add that the transit agency must submit with a request for an exemption documentation of the reasons the infrastructure cannot be installed . Staff is also proposing to delete the language about the exemption being valid until the transit agency's next purchase cycle because the exemption would apply to the purchase each year and is more clear by deleting the unnecessary text.
6. In renumbered section 2023.4(c)(2), staff proposes to clarify and simplify language to address the concerns regarding a transit agency's daily

mileage needs and to remove unnecessary language regarding fuel cell electric bus range and warranty conditions that, as drafted, still would not be used in determining whether an exemption would be approved. The changes remove conflicting language that could be interpreted as inconsistent with the intent and rationale described in the Initial Statement of Reasons. The proposed changes make it clear the mileage exemption will be based on battery electric bus range capabilities on a single charge for the bus type being purchased. This means that a zero emission bus purchase exemption would be granted even if on-route charging could extend the range of a battery electric bus, or if a fuel cell electric bus with sufficient range was available to purchase. The language in 2023.4(c)(3)(B) allows for measured energy use data to be used in lieu of the Orange County Bus Cycle.

7. New language is added in renumbered section 2023.4(c)(3) to address stakeholder concerns about gradeability performance for zero-emission buses that would be operated on steep slopes, and the required documentation that a transit agency must provide to the Executive Officer to receive an exemption from the zero-emission bus purchase requirement.
8. Section 2023.4(c)(3)(A) describes the information the transit agency must provide to the Executive Officer. This consists of information to show that the zero emission bus type being purchased cannot be placed in service in the fleet, topography information to show measured grades where the buses would be operated, and data about existing buses' performance on the slopes in question.
9. Section 2023.4(c)(3)(B) states the transit agency may purchase conventional internal combustion engine buses instead of zero-emission buses once the exemption is granted.
10. In renumbered section 2023.4(c)(4)(C) and (D), staff proposes to clarify language and to modify the language from "the Executive Officer may grant an exemption" to "the Executive Officer will grant an exemption" if the specified conditions are met to remove ambiguity as to whether the exemption would be approved if the conditions are satisfied.
11. In renumbered section 2023.4(c)(5)(A) and (B), staff proposes to expand the language regarding financial hardship to include situations where a transit agency can document that it cannot offset the incremental costs of purchasing any zero emission bus by considering all available zero-emission buses of the relevant bus type, or it cannot offset the electricity costs for operating a depot charging battery electric bus when compared to the same type of internal combustion engine bus. Staff also proposes to specify the documents that must be submitted to support the exemption request.

12. In section 2023.4(c)(5)(C) and (D), staff proposes to clarify language and to modify the language in section 2023.4(c)(5)(D) from “the Executive Officer may grant an exemption” to “the Executive Officer will grant an exemption” if the specified conditions are met to remove ambiguity as to whether the exemption would be approved if the conditions are satisfied.

F. Modifications to Section 2023.5. Zero-Emission Mobility Option.

1. In section 2023.5(a)(1), staff proposes to clarify the type of vehicles that can be considered in a Zero-Emission Mobility Program by adding scooters to the list and to clarify that any combination of eligible zero emission vehicles can be used in the program.
2. In section 2023.5(c)(1), staff proposes to revise the language that specifies the requirements on how a transit agency that opts into a Zero-Emission Mobility Option may receive a credit, instead of using the language “upon approval by the Executive Officer” to remove potential ambiguity as to whether credits would be issued if the required conditions are met.
3. In section 2023.5(c)(1)(B), staff proposes to clarify language on how to calculate the zero-emission mobility credit. Preference is given for bicycles because of their greater utility and implementation, which enhances the likelihood they will be used to a significant degree as compared to other options that are encountering opposition in some jurisdictions (such as electric scooters).
4. In section 2023.5(d)(2), staff proposes to clarify how a mobility credit may be counted as having a zero-emission bus.

G. Modifications to Section 2023.6. Low-NOx Engine Purchase Requirements.

1. In section 2023.6(a)(1) and (2), staff proposes to add the language to include “hybrid propulsion system paired with the engine” for the Low-NOx Engine Purchase Requirements to clarify that a hybrid bus would only be required to have a low NOx engine if the hybrid propulsion system in combination with the engine was certified to the Low-NOx engine standard.
2. In section 2023.6(a)(1), staff proposes to clarify “commercially available” by including the language for both purchase or lease that was originally in the definition of “Commercially Available” that is no longer needed.
3. In section 2023.6(a)(2), staff proposes to clarify that the engine or hybrid propulsion system paired with the engine for a hybrid bus must be certified

to the lowest level of NOx emissions in title 13 of California Code of Regulations, section 2208(c)(18).

H. Modifications to Section 2023.8. Reporting requirements for Transit Agencies.

1. In section 2023.8(c), staff proposes organizational changes to separate the subsections of required reporting information.
2. In section 2023.8(f)(1), staff proposes to clarify the reporting for vehicle types that accumulate zero-emission passenger miles by adding scooters.
3. In section 2023.8(f)(3), staff proposes to change the reference from 2023.5(c)(1)(A) to 2023.5(c) to more appropriately reference the entire zero emission mobility section.
4. In section 2023.8(g), staff proposes to change the reference from 2023.6(b)(1) that does not exist to 2023.6(b).

In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are non-substantive.

These modifications do not change implementation of the regulation in any way that affects the conclusions of the environmental analysis included in the Staff Report because the modifications consist primarily of definition and provision clarifications that do not alter the compliance responses and will not result in significant changes in the timing of compliance responses. Thus, no additional environmental analysis or recirculation of the analysis is required.

Environmental Analysis

These proposed modifications do not change implementation of the regulation in any way that is anticipated to affect the conclusions of the environmental analysis included in the Staff Report because the modifications consist primarily of refinements and clarifications to the initial proposal. At this stage in this rulemaking process, CARB does not expect that any changes in compliance responses resulting from the modifications would result in any of the circumstances requiring recirculation of the analysis as set forth in section 15088.5 of the CEQA Guidelines.

Additional Documents Added to the Record

In the interest of completeness, staff has also added to the rulemaking record and invites comments on the following additional documents:

Additional References and Supplemental Documents

1. Supplement to the Economic Impacts Assessment (included as Attachment B to this notice at: <https://www.arb.ca.gov/regact/2018/ict2018/ict2018.htm>)
2. Updates to the Emissions Inventory Methods and Results (includes updated Appendix L of staff's Initial Statement of Reasons), November 7, 2018 (included as Attachment C to this notice at: <https://www.arb.ca.gov/regact/2018/ict2018/ict2018.htm>)
3. U.S. Department of Transportation (U.S. DOT), Federal Transit Administration (FTA) (2016). Annual Report on Leasing Arrangements. Released December, 2016 Available: <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA%202016%20Annual%20Report%20on%20Leasing%20Arrangements.pdf>
4. U.S. Department of Transportation (U.S. DOT), Federal Transit Administration (FTA) (2017). Annual Report on Leasing Arrangements. Released December, 2017. Available: <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/funding-finance-resources/capital-leasing/69001/tbp-171031-001-capital-leasing-report-2017.pdf>
5. Proterra (2017). Funding Opportunities for Electric Buses. Released January 11, 2017. Available: <https://www.proterra.com/news-resources/blog/financing-a-proterra-bus/>
6. BYD (2018). BYD and Generate Capital to Launch First-Ever U.S. Partnership for an Electric Bus Leasing Program \$200 million allocated to lease program to accelerate adoption of private and public sector electric buses. Released July 11, 2018. Available: http://www.byd.com/sites/Satellite?c=BydArticle&cid=1514427870145&d=Touch&pagename=BYD_EN%2FBydArticle%2FByd_ENCommon%2FArticleDetails&rendermode=preview
7. Proterra (2017). Public Transit Funding Options for Electric Buses and Charging Systems. Released December, 2017. Available: <https://vimeo.com/247358040/ea37fc3d9>

These documents are available for inspection by contacting Chris Hopkins, Regulations Coordinator, at (916) 445-9564.

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Yachun Chow, Manager, Zero Emission Truck and Bus Section, at (916) 322-7450 or Shirin Barfjani, Air Pollution Specialist, Zero Emission Truck and Bus Section, at (916) 445-6017.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than 5:00 pm on the due date to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

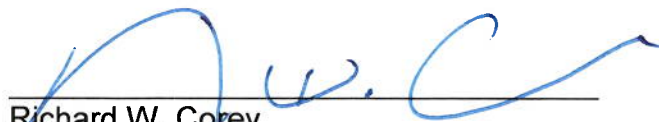
Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to CARB in one of the two forms described above and received by CARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: *November 9, 2018*

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see CARB's website at www.CARB.ca.gov.